PETITIONER:
NEPAL SINGH

Vs.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT15/04/1980

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
SARKARIA, RANJIT SINGH

CITATION:
1980 AIR 1459 1980 SCR (3) 613
1980 SCC (3) 288

ACT:
Termination Simpliciter-An order terminating the services of a temporary Government servant and ex-facie innocuous in that it does not cast any stigma on the Government servant or visits him with penal consequences amounts to termination simpliciter-Order does not contravene Article 311 (2) of the Constitution of India 1950.

HEADNOTE:
The appellant was a temporary sub-inspector of Police. While he was posted at Shahjahanpur the Superintendent of Police, Shahjahanpur commenced disciplinary proceedings against him on the charge that he had violated Rule 29 of the U.P. Government Servants Conduct Rules, 1956 in as much as without prior permission of the Government he had contracted a second marriage in November, 1964, while his first wife was alive. At the stage of evidence, the Deputy Inspector General of Police, Bareilly made an order on March 12, 1970 quashing the disciplinary proceedings on the ground that the offence has been committed at Pithoragarh, situated in a different police range, and therefore, the proceedings taken against the appellant were incompetent.

Meanwhile, on March 8, 1970, the Inspector General of Police, Uttar Pradesh, had issued a letter to all Superintendents of Police in the State directing them to submit a list of Sub-inspectors whose reputation and integrity were very low or who were generally involved in scandalous conduct, drinking, immorality or other acts injurious to the reputation of the Police Service or who were involved encouraging crime. The Superintendent of Police, Shahjahanpur included the name of the appellant in the list submitted by him. On April 27, 1970, the Dy. Inspector General of Police made an order terminating the services of the appellant, reciting that the services of the appellant "are no more required and that he will be considered to have ceased to be in service....."

The appellant filed a Writ Petition against the order terminating his services and claimed that the order contravened Article 311(2) of the Constitution inasmuch as it was an order imposing the punishment of dismissal or removal from service without satisfying the conditions prescribed therein. Allegations of malafide were also made.

The Writ Petition was dismissed. An appeal to the Division Bench was also dismissed. Hence the appeal by special leave.

Dismissing the appeal, the Court.

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HELD: 1. It is now settled law that an order terminating the services of a temporary Government servant and ex facie innocuous in that it does not cast any stigma on the Government servant or visits him with penal consequences must be regarded as effecting a termination simpliciter, but if it is discovered on the basis of material adduced that although innocent in its

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terms the order was passed in fact with a view to punishing the Government servant, it is a punitive order which can be passed only after complying with Art. 311(2) of the Constitution. [615H, 616A-B]

2. The question which calls for determination in all such cases is whether the facts satisfy the criterion repeatedly laid down by this Court that an order is not passed by way of punishment, and is merely an order of termination simpliciter, if the material against the Government servant on which the superior authority has acted constitutes the motive and not the foundation for the order. The application of the test is not always easy. In each case it is necessary to examine the entire range of facts carefully and consider whether in the light of those facts the superior authority intended to punish the Government servant or, having regard to his character, conduct and suitability in relation to the post held by him it was intended simply to terminate his services. The function of the Court is to discover the nature of the order by attempting to ascertain what was the motivating consideration in the mind of the authority which prompted the order. [616B-E]

In the instant case: (a) the appellant was a temporary Government servant, and the question whether he should be retained in service was a matter which arose directly during the drive instituted by the Inspector General of Police in March 1970 for weeding out Police Officers who were unsuitable or unfit to be continued in service; (b) the material which the Superintendent of Police considered was sufficient to lead to the conclusion that the appellant, who was a temporary Government servant, was not suitable for being retained in service-his general character and conduct led to that impression and there was nothing to show that the impugned order was made by way of punishment; (c) the circumstance that a disciplinary proceeding had been instituted against him earlier does not in itself lead to the inference that the impugned order was by way of punishment, and (d) the impugned order was not intended by way of punishment. [616E-G]

State of Maharashtra v. Veerappa R. Saboji and Anr. [1980] 1 S.C.R. 551 A.I.R. 1980 SC 42; applied.

State of Bihar and Ors. v. Shiva Bhikshuk Mishra, [1971] 2 S.C.R. 191; State of U.P. & Ors. v. Sughar Singh [1974] 2 S.C.R. 335 and Regional Manager & Anr. v. Pawan Kumar Dubey; [1976] 3 S.C.R. 540; distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 621 of 1973.

From the Judgment and Order dated 13-3-1973 of the Allahabad High Court in Spl. Appeal No. 9/73).

V. J. Francis for the Appellant.

O. P. Rana for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J. This appeal by special leave arises out of a writ petition filed by a police officer aggrieved by the termination of his services.

The appellant was a temporary Sub-Inspector of Police. He was posted at Shahajahanpur in 1969. The Superintendent of Police,

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Shahjanpur commenced disciplinary proceedings against the appellant on the charge that he had violated Rule 29 of the U.P. Government Servants Conduct Rules, 1956 inasmuch as without prior permission of the Government he had contracted a second marriage in November, 1964, while his first wife was alive. The charge was denied by the appellant. The Superintendent of Police recorded evidence. But at this stage the Deputy Inspector General of Police Bareilly made an order on March 12, 1970 quashing the disciplinary proceedings on the ground that the offence had been committed at Pithoragarh, situated in a different police range, and therefore the proceedings taken against the appellant were incompetent.

Meanwhile, on March 8, 1970, the Inspector General of Police, Uttar Pradesh, had issued a letter to all Superintendents of Police in the State directing them to submit a list of Sub-Inspectors whose reputation and integrity were very low or who were generally involved in scandalous conduct, drinking, immorality or other acts injurious to the reputation of the Police service or who were involved in encouraging crime. The Superintendent of Police, Shahjahanpur included the name of the appellant in the list submitted by him. On April 27, 1970, the Deputy Inspector General of Police made an order terminating the services of the appellant. The order recites that the services of the appellant, "are no more required and that he will be considered to have ceased to be in service ....."

The appellant filed a writ petition against the order terminating his services, and claimed that the order contravened Article 311(2) of the Constitution inasmuch as it was an order imposing the punishment of dismissal or removal from service without satisfying the conditions prescribed in that provision. It was also alleged that the order was passed mala fide. The writ petition was dismissed by a learned Single Judge of the Allahabad High Court. An appeal was dismissed by a Division Bench of the High Court on March 13, 1973.

In the appeal before us, it is urged for the appellant that the High Court was wrong in holding that the order terminating the appellant's services was not an order imposing a punishment. We are referred to the disciplinary proceedings instituted against the appellant in 1969 and it is submitted that although the order of termination does not refer to those proceedings and the charge on which they were commenced, the appellant's services were terminated with a view to punish him for contracting a second marriage without prior permission of the Government. We are satisfied that the contention is without substance. It is now settled law that an order terminating the

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services of a temporary Government servant and ex facie innocuous in that it does not cast my stigma on the Government servant or visits him with penal consequences must be regarded as effecting a termination simpliciter, but if it is discovered on the basis of material adduced that

although innocent in its terms the order was passed in fact with a view to punishing the Government servant, it is a punitive order which can be passed only after complying with Article 311(2) of the Constitution. The scope of the enquiry called for in such a case has been outlined by one of us in State of Maharashtra v. Veerappa R. Saboji and another. But the question which calls for determination in all such cases is whether the facts satisfy the criterion repeatedly laid down by this Court that an order is not passed by way of punishment, and is merely an order of termination simpliciter, if the material against the Government servant on which the superior authority has acted constitutes the motive and not the foundation for the order. The application of the test is not always easy. In each case it is necessary to examine the entire range of facts carefully and consider whether in the light of those facts the superior authority intended to punish the Government servant or, having regard to his character, conduct and suitability in relation to the post held by him it was intended simply to terminate his services. The function of the court is to discover the nature of the order by attempting to ascertain what was the motivating consideration in the mind of the authority which prompted the order.

In the present appeal, the appellant was a temporary Government servant. The question whether he should be retained in service was a matter which arose directly during the drive instituted by the Inspector General of Police in March, 1970 for weeding out police officers who were unsuitable or unfit to be continued in service. The Superintendent of Police prepared a list of Sub-Inspectors functioning within his jurisdiction, and included the name of the appellant in that list. The material which he considered was sufficient to lead to the conclusion that the appellant, who was a temporary Government servant, was not suitable for being retained in service. His general character and conduct led to that impression. There is nothing to show that the impugned order was made by way of punishment. The circumstance that a disciplinary proceeding had been instituted against him earlier does not in itself lead to the inference that the impugned order was by way of punishment. As we have observed, that is a conclusion which must follow from the nature of the intent behind the order. That intention can be discovered and proved, like any other
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fact, from the evidence on the record. In this case, it is not proved that the impugned order was intended by way of punishment.

Learned counsel for the appellant relies on State of Bihar & Ors. v. Shiva Bhikshuk Mishra and State of Uttar Pradesh & Ors. v. Sugher Singh. Both were cases of permanent Government servants. And as regards Regional Manager & Anr. v. Pawan Kumar Dubey, to which also reference has been made, that was a case where on the facts the Court found that there were no administrative reasons for the impugned reversion.

The appeal fails and is dismissed, but in the circumstances there is no order as to costs.

S. R. Appeal dismissed.
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